

AMENDED IN ASSEMBLY APRIL 15, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1165

Introduced by Assembly Member ~~Tom Berryhill~~ Yamada

February 27, 2009

~~An act to amend Section 12986 of the Water Code, relating to levees.~~
An act to amend Section 65007 of the Government Code, and to amend Sections 8501, 8502, 8559, 8560, 8610.5, and 8709.4 of, to add Sections 8709.5, 8709.6, and 8709.7 to, to repeal Sections 8562 and 8577 of, and to repeal and amend Sections 8522.3, 8522.5, 8523, and 8578 of, the Water Code, relating to flood protection.

LEGISLATIVE COUNSEL'S DIGEST

AB 1165, as amended, ~~Tom Berryhill~~ Yamada. ~~Water: delta levee maintenance. Flood protection.~~

(1) Existing law prohibits the legislative body of a city or county within the Sacramento-San Joaquin Valley, after the adoption of specified amendments to the applicable general plan or zoning ordinance, from entering into a development agreement for property that is located within a flood hazard zone, unless the legislative body makes one of several possible determinations, one of which is a determination that the local flood management agency has made adequate progress on the construction of a flood protection system. Existing law, after the adoption of those amendments, also conditions the approval of a discretionary entitlement or ministerial permit that would result in the construction of a new residence for a project that is located within a flood hazard zone, and the approval of a tentative map, or a parcel map as specified, for a subdivision that is located within a flood hazard zone, upon the legislative body making one of

several possible determinations, one of which is a determination that the local flood management agency has made adequate progress on the construction of a flood protection system. Existing law defines “adequate progress” to mean, among other things, that the revenues sufficient to fund each year of the project schedule for the flood protection system have been identified, and that at least 90% of the revenues scheduled to have been received in any given year have been appropriated and are being expended.

This bill, for the purpose of those provisions, would authorize the Central Valley Flood Protection Board (board) to find that the local flood management agency is making adequate progress in working toward the completion of the flood protection system for any year in which state funding is not appropriated consistent with an agreement between a state agency and the local flood management agency.

(2) Under existing law, the Department of Water Resources performs various flood management activities throughout the state, and the board engages in flood management activities along the Sacramento River and San Joaquin River, their tributaries, and related areas. Existing law establishes the Sacramento and San Joaquin Drainage District under the administration of the board for the purposes of carrying out specified flood management activities within the boundaries of the district. Existing law requires the board, in any evidentiary hearing, to consider various matters, including the effects of a proposed action on the State Plan of Flood Control, as defined.

This bill would require the department to prepare and the board to adopt a map that clearly delineates the boundaries of the Sacramento and San Joaquin Drainage District. The board would be required to make the map available to the public at no charge. The bill would revise the definition of the State Plan of Flood Control for these and other purposes.

(3) Existing law provides that a majority of the board constitutes a quorum and declares that no board action is effective unless the action is concurred in by a majority of the board members.

This bill, instead, would provide that a majority of the voting members of the board constitutes a quorum and would declare that no board action is effective unless a quorum is present and the action is concurred in by a majority of those members voting and present.

(4) Under existing law, any meeting of the board, at its office, when all of the members are present, is a legal meeting at which any business may be transacted.

This bill would repeal that provision.

(5) Existing law prohibits a board member or any person or organization with an interest in board decisions, or any person representing a person or organization with an interest in board decisions who intends to influence the decision of a board member on a matter before the board, from conducting an ex parte communication, as defined.

This bill would revise the definition of the term “ex parte communication” to mean any oral or written communication outside of a noticed board meeting concerning specified matters. The bill would prohibit a board member appointed by the Governor from participating in an ex parte communication with any person or organization with an interest in board decisions, or any person representing a person or organization with an interest in board decisions who intends to influence the decision of a board member on a matter before the board.

(6) Existing law requires the board to hold an evidentiary hearing for any matter that requires the issuance of a permit.

This bill would require the board to hold an evidentiary hearing for any matter that requires the issuance of a permit if the proposed work may significantly affect any element of the State Plan of Flood Control or if a formal protest against that permit has been lodged. The bill would authorize the board to, by regulation, define types of encroachments that will not significantly affect any element of the State Plan of Flood Control. The bill would authorize the board to delegate the approval of permits for those encroachments to the executive officer.

(7) Existing law requires the board to make a specified finding regarding the impact of an encroachment on public safety before taking action to modify an encroachment on levees, channels, or other flood control works.

This bill would authorize the board to delegate to the executive officer the authority to take action to remove or modify the encroachment. The bill would authorize the board, and the executive officer if delegated that authority, to issue an order directing a person or public agency to cease and desist from undertaking, or threatening to undertake, an activity that may encroach on levees, channels, or other flood control works under the jurisdiction of the board. The board, and the executive officer if delegated that authority, would be granted authority to issue an order directing a person or public agency to cease and desist from undertaking, or threatening to undertake, an activity that requires a permit from the board without securing a permit or an activity that is

inconsistent with a permit issued by the board. The bill would authorize the imposition of civil liability on a person or public agency that undertakes an encroachment or commits other action in violation of specified requirements relating to encroachments to provisions relating to the board.

(8) The bill would make various technical corrections.

~~Existing law establishes a delta levee maintenance program pursuant to which a local agency may request reimbursement for costs incurred in connection with the maintenance or improvement of project or nonproject levees in the Sacramento-San Joaquin Delta. Existing law declares legislative intent to reimburse eligible local agencies under this program, until July 1, 2010, in an amount not to exceed 75% of those costs that are incurred in excess of \$1,000 per mile of levee, and repeals that statement of legislative intent on January 1, 2011. Existing law declares legislative intent to reimburse 50% of those described costs on and after July 1, 2010.~~

~~This bill, with respect to the statement of legislative intent to reimburse 75% of the described costs, would extend the inoperative date to July 1, 2015, and the repeal date to January 1, 2016. The bill would make the statement of legislative intent to reimburse 50% of the described costs operative on July 1, 2015.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 65007 of the Government Code is*
2 *amended to read:*

3 65007. As used in this title, the following terms have the
4 following meanings, unless the context requires otherwise:

5 (a) “Adequate progress” means all of the following:

6 (1) The total project scope, schedule, and cost of the completed
7 flood protection system have been developed to meet the
8 appropriate standard of protection.

9 (2) (A) Revenues *that are* sufficient to fund each year of the
10 project schedule developed in paragraph (1) have been identified
11 and, in any given year and consistent with that schedule, at least
12 90 percent of the revenues scheduled to have been received by that
13 year have been appropriated and are currently being expended.

1 (B) *Notwithstanding subparagraph (A), for any year in which*
2 *state funding is not appropriated consistent with an agreement*
3 *between a state agency and a local flood management agency, the*
4 *Central Valley Flood Protection Board may find that the local*
5 *flood management agency is making adequate progress in working*
6 *toward the completion of the flood protection system.*

7 (3) Critical features of the flood protection system are under
8 construction, and each critical feature is progressing as indicated
9 by the actual expenditure of the construction budget funds.

10 (4) The city or county has not been responsible for a significant
11 delay in the completion of the system.

12 (5) The local flood management agency shall provide the
13 Department of Water Resources and the Central Valley Flood
14 Protection Board with the information specified in this subdivision
15 sufficient to determine substantial completion of the required flood
16 protection. The local flood management agency shall annually
17 report to the Central Valley Flood Protection Board on the efforts
18 in working toward completion of the flood protection system.

19 (b) “Central Valley Flood Protection Plan” has the same
20 meaning as that set forth in Section 9612 of the Water Code.

21 (c) “Developed area” has the same meaning as that set forth in
22 Section 59.1 of Title 44 of the Code of Federal Regulations.

23 (d) “Flood hazard zone” means an area subject to flooding that
24 is delineated as either a special hazard area or an area of moderate
25 hazard on an official flood insurance rate map issued by the Federal
26 Emergency Management Agency. The identification of flood
27 hazard zones does not imply that areas outside the flood hazard
28 zones, or uses permitted within flood hazard zones, will be free
29 from flooding or flood damage.

30 (e) “Nonurbanized area” means a developed area or an area
31 outside a developed area in which there are fewer than 10,000
32 residents.

33 (f) “Project levee” means any levee that is part of the facilities
34 of the State Plan of Flood Control.

35 (g) “Sacramento-San Joaquin Valley” means lands in the bed
36 or along or near the banks of the Sacramento River or San Joaquin
37 River, or their tributaries or connected therewith, or upon any land
38 adjacent thereto, or within the overflow basins thereof, or upon
39 land susceptible to overflow therefrom. The Sacramento-San

1 Joaquin Valley does not include lands lying within the Tulare Lake
2 basin, including the Kings River.

3 (h) “State Plan of Flood Control” has the same meaning as that
4 set forth in subdivision (j) of Section 5096.805 of the Public
5 Resources Code.

6 (i) “Urban area” means a developed area in which there are
7 10,000 residents or more.

8 (j) “Urbanizing area” means a developed area or an area outside
9 a developed area that is planned or anticipated to have 10,000
10 residents or more within the next 10 years.

11 (k) “Urban level of flood protection” means the level of
12 protection that is necessary to withstand flooding that has a
13 1-in-200 chance of occurring in any given year using criteria
14 consistent with, or developed by, the Department of Water
15 Resources.

16 *SEC. 2. Section 8501 of the Water Code is amended to read:*

17 8501. (a) The boundaries of the district are set forth and
18 described in Chapter 170, ~~Statutes and Amendments to the Codes,~~
19 ~~California, of the Statutes of 1913,~~ and the description is hereby
20 incorporated herein by reference as ~~there set-out~~ *set forth in that*
21 *chapter.*

22 (b) *The department shall prepare, and the Central Valley Flood*
23 *Protection Board shall adopt, a map that clearly delineates the*
24 *boundaries of the district. The board shall make the map available*
25 *to the public at no charge.*

26 *SEC. 3. Section 8502 of the Water Code is amended to read:*

27 8502. The management and control of the district are vested
28 in the ~~reclamation board~~ *Central Valley Flood Protection Board.*

29 *SEC. 4. Section 8522.3 of the Water Code, as added by Section*
30 *4 of Chapter 365 of the Statutes of 2007, is repealed.*

31 ~~8522.3. “Facilities of the State Plan of Flood Control” means~~
32 ~~the levees, weirs, channels, and other features of the State Plan of~~
33 ~~Flood Control.~~

34 *SEC. 5. Section 8522.3 of the Water Code, as added by Section*
35 *8 of Chapter 366 of the Statutes of 2007, is amended to read:*

36 8522.3. “Facilities of the State Plan of Flood Control” ~~means~~
37 ~~the levees, weirs, channels, and other features of the State Plan of~~
38 ~~Flood Control~~ *has the same meaning as that set forth in subdivision*
39 *(e) of Section 5096.805 of the Public Resources Code.*

1 *SEC. 6. Section 8522.5 of the Water Code, as added by Section*
2 *5 of Chapter 365 of the Statutes of 2007, is repealed.*

3 ~~8522.5. “Project levee” means any levee that is a part of the~~
4 ~~facilities of the State Plan of Flood Control.~~

5 *SEC. 7. Section 8522.5 of the Water Code, as added by Section*
6 *9 of Chapter 366 of the Statutes of 2007, is amended to read:*

7 ~~8522.5. “Project levee” means any levee that is a part of the~~
8 ~~facilities of the State Plan of Flood Control~~ *has the same meaning*
9 *as that set forth in subdivision (g) of Section 5096.805 of the Public*
10 *Resources Code.*

11 *SEC. 8. Section 8523 of the Water Code, as added by Section*
12 *6 of Chapter 365 of the Statutes of 2007, is repealed.*

13 ~~8523. “State Plan of Flood Control” means the state and federal~~
14 ~~flood control works, lands, programs, plans, policies, conditions,~~
15 ~~and mode of maintenance and operations of the Sacramento River~~
16 ~~Flood Control Project described in Section 8350, and of flood~~
17 ~~control projects in the Sacramento River and San Joaquin River~~
18 ~~watersheds authorized pursuant to Article 2 (commencing with~~
19 ~~Section 12648) of Chapter 2 of Part 6 of Division 6 for which the~~
20 ~~board or the department has provided the assurances of nonfederal~~
21 ~~cooperation to the United States, and those facilities identified in~~
22 ~~Section 8361.~~

23 *SEC. 9. Section 8523 of the Water Code, as added by Section*
24 *10 of Chapter 366 of the Statutes of 2007, is amended to read:*

25 ~~8523. “State Plan of Flood Control” means the state and federal~~
26 ~~flood control works, lands, programs, plans, policies, conditions,~~
27 ~~and mode of maintenance and operations of the Sacramento River~~
28 ~~Flood Control Project described in Section 8350, and of flood~~
29 ~~control projects in the Sacramento River and San Joaquin River~~
30 ~~watersheds authorized pursuant to Article 2 (commencing with~~
31 ~~Section 12648) of Chapter 2 of Part 6 of Division 6 for which the~~
32 ~~board or the department has provided the assurances of nonfederal~~
33 ~~cooperation to the United States, and those facilities identified in~~
34 ~~Section 8361~~ *has the same meaning as that set forth in subdivision*
35 *(j) of Section 5096.805 of the Public Resources Code.*

36 *SEC. 10. Section 8559 of the Water Code is amended to read:*

37 ~~8559. A majority of the voting members of the board constitutes~~
38 ~~a quorum.~~

39 *SEC. 11. Section 8560 of the Water Code is amended to read:*

1 8560. No action of the board shall be effective unless ~~it a~~
2 *quorum is present and the action* is concurred in by a majority of
3 ~~the members of the board those members present and voting.~~

4 *SEC. 12. Section 8562 of the Water Code is repealed.*

5 8562. ~~Any meeting of the board, at its office, when all of the~~
6 ~~members are present, is a legal meeting at which any business may~~
7 ~~be transacted.~~

8 *SEC. 13. Section 8577 of the Water Code, as added by Section*
9 *12 of Chapter 365 of the Statutes of 2007, is repealed.*

10 8577. (a) ~~A board member shall not participate in any board~~
11 ~~action or attempt to influence any decision or recommendation by~~
12 ~~any employee of, or consultant to, the board that involves himself~~
13 ~~or herself or that involves any entity with which the member is~~
14 ~~connected as a director, officer, consultant, or full- or part-time~~
15 ~~employee, or in which the member has a direct personal financial~~
16 ~~interest within the meaning of Section 87100 of the Government~~
17 ~~Code.~~

18 (b) ~~A board member shall not participate in any proceeding~~
19 ~~before any agency as a consultant or in any other capacity on behalf~~
20 ~~of any person that actively participates in matters before the board.~~

21 (c) ~~For a period of 12 months after leaving office, a former~~
22 ~~board member shall not act as agent or attorney for, or otherwise~~
23 ~~represent, any other person before the board by making any formal~~
24 ~~or informal appearance or by making any oral or written~~
25 ~~communication to the board.~~

26 (d) ~~A board member shall not advocate to the United States~~
27 ~~Army Corps of Engineers or other federal agency on behalf of any~~
28 ~~project that has been or is reasonably anticipated to be submitted~~
29 ~~to the board for review, unless the board authorizes that action in~~
30 ~~accordance with Section 8560.~~

31 *SEC. 14. Section 8578 of the Water Code, as added by Section*
32 *13 of Chapter 365 of the Statutes of 2007, is repealed.*

33 8578. (a) ~~For the purposes of this section, “ex parte~~
34 ~~communication” means any oral or written communication~~
35 ~~concerning matters, other than purely procedural matters, under~~
36 ~~the board’s jurisdiction that are subject to a vote.~~

37 (b) (1) ~~A board member or any person, excluding a staff~~
38 ~~member of the board acting in his or her official capacity, who~~
39 ~~intends to influence the decision of a board member on a matter~~
40 ~~before the board, shall not conduct an ex parte communication.~~

1 ~~(2) If an ex parte communication occurs, the board member~~
2 ~~shall notify the interested party that a full disclosure of the ex parte~~
3 ~~communication shall be entered in the board's record.~~

4 ~~(3) Communications cease to be ex parte communications when~~
5 ~~the board member or the person who engaged in the communication~~
6 ~~with the board member fully discloses the communication and~~
7 ~~requests in writing that it be placed in the board's official record~~
8 ~~of the proceeding.~~

9 ~~(e) Notwithstanding Section 11425.10 of the Government Code,~~
10 ~~the ex parte communications provisions of the Administrative~~
11 ~~Procedure Act (Article 7 (commencing with Section 11430.10) of~~
12 ~~Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government~~
13 ~~Code) do not apply to proceedings of the board to which this~~
14 ~~section applies.~~

15 ~~SEC. 15. Section 8578 of the Water Code, as added by Section~~
16 ~~17 of Chapter 366 of the Statutes of 2007, is amended to read:~~

17 ~~8578. (a) For the purposes of this section, "ex parte~~
18 ~~communication" means any oral or written communication outside~~
19 ~~of a noticed board meeting concerning matters, other than purely~~
20 ~~procedural matters, under the board's jurisdiction that are subject~~
21 ~~to a vote, regarding any of the following:~~

22 ~~(1) An application that has been submitted to the board and has~~
23 ~~been determined to be complete by the executive officer.~~

24 ~~(2) An enforcement action.~~

25 ~~(3) Any other quasi-judicial matter requiring board action, after~~
26 ~~the matter has been placed on the board's agenda and notice of~~
27 ~~the meeting has been provided pursuant to Section 11125 of the~~
28 ~~Government Code.~~

29 ~~(b) (1) No board member nor any person appointed pursuant~~
30 ~~to subdivision (b) of Section 8551 shall participate in an ex parte~~
31 ~~communication with any person or organization with an interest~~
32 ~~in board decisions, nor any person representing a person or~~
33 ~~organization with an interest in board decisions, excluding a staff~~
34 ~~member of the board acting in his or her official capacity, who~~
35 ~~intends to influence the decision of a board member on a matter~~
36 ~~before the board, shall conduct an ex parte communication.~~

37 ~~(2) If an ex parte communication occurs, the board member~~
38 ~~shall notify the interested party that a full disclosure of the ex parte~~
39 ~~communication shall be entered in the board's record.~~

(3) Communications cease to be ex parte communications when the board member or the person who engaged in the communication with the board member fully discloses the communication and requests in writing that it be placed in the board's official record of the proceeding.

(c) Notwithstanding Section 11425.10 of the Government Code, the ex parte communications provisions of the Administrative Procedure Act (Article 7 (commencing with Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code) do not apply to proceedings of the board to which this section applies.

SEC. 16. Section 8610.5 of the Water Code is amended to read:

8610.5. (a) (1) The board shall adopt regulations relating to evidentiary hearings pursuant to Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

~~(2) The board shall hold an evidentiary hearing for any matter that requires the issuance of a permit.~~

(2) The board shall hold an evidentiary hearing for any matter that requires the issuance of a permit if the proposed work may significantly affect any element of the State Plan of Flood Control or if a formal protest against that permit has been lodged.

(3) The board may, by regulation, define types of encroachments that will not significantly affect any element of the State Plan of Flood Control. Evidentiary hearings are not required for uncontested applications for those defined encroachments unless, in the judgment of the executive officer, there is a reasonable possibility that the project will have a significant effect on an adopted plan of flood control.

(4) The board may delegate approval of permits for encroachments that will not significantly affect any element of the State Plan of Flood Control to the executive officer.

~~(3)~~

(5) The board is not required to hold an evidentiary hearing before making a decision relating to general flood protection policy or planning.

(b) The board may take an action pursuant to Section 8560 only after allowing for public comment.

1 (c) The board shall, in any evidentiary hearing, consider all of
2 the following, as applicable, for the purpose of taking any action
3 pursuant to Section 8560:

4 (1) Evidence that the board admits into its record from any party,
5 state or local public agency, or nongovernmental organization with
6 expertise in flood or flood plain management.

7 (2) The best available science that relates to the scientific issues
8 presented by the executive officer, legal counsel, the department,
9 or other parties that raise credible scientific issues.

10 (3) Effects of the proposed decision on the entire State Plan of
11 Flood Control.

12 (4) Effects of reasonably projected future events, including, but
13 not limited to, changes in hydrology, climate, and development
14 within the applicable watershed.

15 *SEC. 17. Section 8709.4 of the Water Code is amended to read:*

16 8709.4. (a) Before taking action to remove or modify
17 ~~encroachments~~ *an encroachment* on levees, channels, and other
18 flood control works pursuant to powers granted by this part, *a*
19 *permit*, or standards adopted pursuant to this part, the board shall
20 make one of the following findings, based on substantial evidence,
21 regarding the encroachment's impact on public safety:

22 (1) The encroachment presents an imminent threat to the
23 structural integrity of the levee, channel, or other flood control
24 work.

25 (2) The encroachment significantly impairs the functional
26 capability of the levee, channel, or other flood control work to
27 fulfill its particular intended role in the overall flood control plan.

28 (b) Routine maintenance that includes the removal or
29 modification of fences, gates, and vegetation on the levee structure
30 and other flood control structures is not subject to subdivision (a).

31 *(c) The board may delegate authority to the executive officer*
32 *to take action to remove or modify encroachments on levees,*
33 *channels, and other flood control works in accordance with*
34 *subdivision (a).*

35 *SEC. 18. Section 8709.5 is added to the Water Code, to read:*

36 8709.5. (a) *Notwithstanding Section 8709 or 8709.4, if the*
37 *board, or the executive officer if delegated authority by the board,*
38 *determines that any person or public agency has undertaken, or*
39 *is threatening to undertake, any activity that may encroach on*
40 *levees, channels, or other flood control works under the jurisdiction*

1 of the board, the board or executive officer may issue an order
2 directing that person or public agency to cease and desist. The
3 order may also be issued to enforce any requirement of a permit
4 or any requirement under this part that is subject to the jurisdiction
5 of the board.

6 (b) The cease and desist order shall be issued only if the person
7 or public agency has failed to respond in a satisfactory manner
8 to an oral notice given in person or by telephone, followed by a
9 written confirmation, or a written notice given by certified mail
10 or hand delivered to the landowner or the person performing the
11 activity. The notice shall include the following:

12 (1) A description of the activity which meets the criteria of
13 subdivision (a) of Section 8709.4 or a statement that the described
14 activity constitutes an encroachment that is in violation of this
15 article because it is not authorized by a valid permit.

16 (2) A statement that the described activity shall immediately
17 cease or the alleged violator may receive a cease and desist order;
18 the violation of which may subject the violator to fines or penalties.

19 (3) The name, address, and telephone number of the staff
20 member who is to be contacted for further information.

21 (c) The cease and desist order may be subject to terms and
22 conditions as the board or the executive officer may determine are
23 necessary to avoid an unreasonable impact on public safety.

24 (d) The cease and desist order shall be effective upon its
25 issuance, and copies shall be served immediately by certified mail
26 upon the person or agency subject to the order.

27 SEC. 19. Section 8709.6 is added to the Water Code, to read:

28 8709.6. (a) If the board, after public hearing, determines that
29 any person or public agency has undertaken, or is threatening to
30 undertake, any activity that requires a permit from the board
31 without securing a permit or is inconsistent with any permit
32 previously issued by the board, the board may issue an order
33 directing that person or public agency to cease and desist. The
34 board may also issue the order to enforce any requirement of a
35 permit, or any requirement of this part that is subject to the
36 jurisdiction of the board.

37 (b) The cease and desist order may be subject to terms and
38 conditions as the board may determine are necessary to ensure
39 compliance with this part, including immediate removal of any

1 *encroachment or the setting of a schedule within which action*
2 *shall be taken to obtain a permit pursuant to this part.*

3 *(c) Notice of the public hearing on a proposed cease and desist*
4 *order shall be given to any affected person and public agency and*
5 *the order shall be final and effective upon the issuance of the order.*
6 *Copies shall be served immediately by certified mail upon the*
7 *person or public agency subject to the order and upon other*
8 *affected persons and public agencies that appear at the hearing*
9 *or request a copy.*

10 *(d) In addition to any other authority to order restoration, the*
11 *board may, after a public hearing, order restoration of a site if it*
12 *finds that an encroachment has occurred without a permit from*
13 *the board.*

14 *SEC. 20. Section 8709.7 is added to the Water Code, to read:*

15 *8709.7. (a) Any person or public agency that violates any*
16 *provision of this article may be civilly liable in accordance with*
17 *this section.*

18 *(b) (1) Civil liability may be imposed by the superior court in*
19 *accordance with this article on any person or public agency that*
20 *performs or undertakes an encroachment that is in violation of*
21 *this article or that is inconsistent with any permit previously issued*
22 *by the board in an amount that shall not exceed thirty thousand*
23 *dollars (\$30,000), but shall not be less than five hundred dollars*
24 *(\$500).*

25 *(2) Civil liability may be imposed for any violation of this part*
26 *other than that specified in paragraph (1) in an amount that shall*
27 *not exceed thirty thousand dollars (\$30,000).*

28 *(c) Any person or public agency that performs or undertakes*
29 *an encroachment that is in violation of this part or in a manner*
30 *that is inconsistent with any permit previously issued by the board,*
31 *when the person or public agency intentionally and knowingly*
32 *performs or undertakes the encroachment in violation of this part*
33 *or in a manner that is inconsistent with any previously issued*
34 *permit, may, in addition to any other penalties, be civilly liable in*
35 *accordance with this subdivision. Civil liability may be imposed*
36 *by the superior court in accordance with this article for a violation*
37 *described in this subdivision in an amount that shall not be less*
38 *than one thousand dollars (\$1,000), nor more than fifteen thousand*
39 *dollars (\$15,000), per day for each day in which the violation*
40 *persists.*

1 (d) In determining the amount of civil liability, the following
2 factors shall be considered:

3 (1) The nature, circumstance, extent, and gravity of the violation.

4 (2) Whether the violation is susceptible to restoration or other
5 remedial measures.

6 (3) The function of the levee, channel, or other flood control
7 work affected by the violation.

8 (4) The cost to the state of bringing the action.

9 (5) With respect to the violator, any voluntary restoration or
10 remedial measures undertaken, any prior history of violations, the
11 degree of culpability, economic profits, if any, resulting from, or
12 expected to result as a consequence of, the violation, and other
13 matters the board deems relevant.

14 (e) Any person or public agency that intentionally or negligently
15 violates any cease and desist order issued, reissued, or amended
16 by the board, or any restoration order issued, reissued, or amended
17 by the board may be liable civilly in an amount that shall not
18 exceed six thousand dollars (\$6,000) for each day in which that
19 violation persists. Any actual penalty imposed shall be reasonably
20 proportionate to the damage suffered as a consequence of the
21 violation.

22 (f) This section does not authorize the issuance or enforcement
23 of any cease and desist order as to any activity undertaken by a
24 local public agency pursuant to a declaration of emergency by the
25 governing body of the local public agency or the board of
26 supervisors of the county in which the activity is being or may be
27 undertaken.

28 ~~SECTION 1. Section 12986 of the Water Code, as amended~~
29 ~~by Section 4 of Chapter 548 of the Statutes of 2006, is amended~~
30 ~~to read:~~

31 ~~12986. (a) It is the intention of the Legislature to reimburse~~
32 ~~an eligible local agency pursuant to this part for costs incurred in~~
33 ~~any year for the maintenance or improvement of project or~~
34 ~~nonproject levees as follows:~~

35 ~~(1) Costs incurred shall not be reimbursed if the entire cost~~
36 ~~incurred per mile of project or nonproject levee is one thousand~~
37 ~~dollars (\$1,000) or less.~~

38 ~~(2) Not more than 75 percent of any costs incurred in excess of~~
39 ~~one thousand dollars (\$1,000) per mile of project or nonproject~~
40 ~~levee shall be reimbursed.~~

1 ~~(3) (A) As part of the project plans approved by the board, the~~
2 ~~department shall require the local agency or an independent~~
3 ~~financial consultant to provide information regarding the agency's~~
4 ~~ability to pay for the cost of levee maintenance or improvement.~~
5 ~~Based on that information, the department may require the local~~
6 ~~agency or an independent financial consultant to prepare a~~
7 ~~comprehensive study on the agency's ability to pay.~~

8 ~~(B) The information or comprehensive study of the agency's~~
9 ~~ability to pay shall be the basis for determining the maximum~~
10 ~~allowable reimbursement eligible under this part. This paragraph~~
11 ~~does not increase the maximum reimbursement allowed under~~
12 ~~paragraph (2).~~

13 ~~(4) Reimbursements made to the local agency in excess of the~~
14 ~~maximum allowable reimbursement shall be returned to the~~
15 ~~department.~~

16 ~~(5) The department may recover, retroactively, excess~~
17 ~~reimbursements paid to the local agency from any time after~~
18 ~~January 1, 1997, based on an updated study of the agency's ability~~
19 ~~to pay.~~

20 ~~(6) All final costs allocated or reimbursed under a plan shall be~~
21 ~~approved by the reclamation board for project and nonproject levee~~
22 ~~work.~~

23 ~~(7) Costs incurred pursuant to this part that are eligible for~~
24 ~~reimbursement include construction costs and associated~~
25 ~~engineering services, financial or economic analyses,~~
26 ~~environmental costs, mitigation costs, and habitat improvement~~
27 ~~costs.~~

28 ~~(b) Upon completion of its evaluation pursuant to Sections 139.2~~
29 ~~and 139.4, by January 1, 2008, the department shall recommend~~
30 ~~to the Legislature and the Governor priorities for funding under~~
31 ~~this section.~~

32 ~~(c) This section shall become inoperative on July 1, 2015, and,~~
33 ~~as of January 1, 2016, is repealed, unless a later enacted statute,~~
34 ~~that becomes operative on or before January 1, 2016, deletes or~~
35 ~~extends the dates on which it becomes inoperative and is repealed.~~

36 ~~SEC. 2. Section 12986 of the Water Code, as amended by~~
37 ~~Section 5 of Chapter 548 of the Statutes of 2006, is amended to~~
38 ~~read:~~

39 ~~12986. (a) It is the intention of the Legislature to reimburse~~
40 ~~from the General Fund an eligible local agency pursuant to this~~

- 1 ~~part for costs incurred in any year for the maintenance or~~
2 ~~improvement of project or nonproject levees as follows:~~
3 ~~(1) Costs incurred shall not be reimbursed if the entire cost~~
4 ~~incurred per mile of levee is one thousand dollars (\$1,000) or less.~~
5 ~~(2) Fifty percent of any costs incurred in excess of one thousand~~
6 ~~dollars (\$1,000) per mile of levee shall be reimbursed.~~
7 ~~(3) The maximum total reimbursement from the General Fund~~
8 ~~shall not exceed two million dollars (\$2,000,000) annually.~~
9 ~~(b) This section shall become operative on July 1, 2015.~~